

TUCSON SUPPLEMENTAL RETIREMENT SYSTEM BOARD OF TRUSTEES

Meeting Minutes from July 23, 2009, 8:30 a.m.

Members Present: Brian Bjorndahl, Chairman
Cindy Bezaury, Human Resources Director
Silvia Amparano, Interim Finance Director
Brandy Kadous, Employee Representative
Gage Andrews, Employee Representative
Jean Wilkins, Retiree Representative

Staff Present: David Deibel, Board Counsel
John Behrens, Finance Analyst, Investments
Mike Hermanson, Retirement & Benefits Administrator
Doris Rentschler, Finance Analyst, Retirement
Claire Beaubien, Board Administrative Assistant
Jenefer Carlin, CTRA Representative

Guests Present: Helen Gutridge, Disability Retirement Applicant
John Thomas, City of Tucson Employee
Kate McGee, ASFCME
Gilbert Martinez, Employee
Janet Nickell, Employee
Linda Hatfield, CWA President
Lynn Greenawalt, Human Resources Administrator

A. Call to order

Chairman Bjorndahl called the meeting to order at 8:30 a.m., after ascertaining that a quorum of Board members was present.

B. Discussion of Disability Evaluations with Dr. Scott Krasner

1. Presentation of "What is a Disability"? by Dr. Krasner

Chairman Bjorndahl welcomed Dr. Scott Krasner to the meeting and then turned the meeting over to him. Dr. Krasner began his slide presentation with asking the Board what a disability was. He advised the the Board that the word "disability" is not a medical term and is therefore impossible for a doctor to determine if a person is "disabled." The American Medical Association describes a "disability" as the degree to which a body is impaired. Impairment is the degree to which the body has been altered. Disability is the degree to which that alteration affects one's life. Factors that are included in determining a disability are medical impairment, intelligence and aptitude and previous work experience. Some of these factors are not in the doctor's purview to determine impairment and they therefore are unable to make that conclusion.

Dr. Krasner reported that the evaluation of a person to determine if there is a disability is a two-step process. The first step is to evaluate the body insofar as basic functions to determine if there is any alteration or impairment. The doctor disregards the person's occupation, he only evaluates what the body is capable of doing. Based on his observation, he will impose restrictions that are appropriate for the impairment(s). Step two is to compare those restrictions with the basic functions of the job the person is asked to perform. He gave an example of two people with a finger amputation. Both people are impaired. One of those people is an insurance sales person and the other person is a concert pianist. By comparing the restrictions

imposed for a figure amputation on both people, he then compares their job functions to those restrictions to determine if the job can be done by the person with the impairment. Thus, the difference between what a person can do medically and what the job requires the employee to do is disability.

The doctor can tell what work restrictions are needed, if any. He can also tell whether those restrictions are compatible with the job requirements of the disability applicant. If the doctor finds that the job requirements and the restrictions are not compatible, he can tell what restrictions are needed to determine possible reasonable accommodations. The doctor can not determine the job requirements nor can he define what substantial gainful activity means. Every system has a different definition so he is not able to provide that definition.

Janet Nickell asked what is done with someone who is bi-polar and uncontrolled. Dr. Krasner replied that psychology or psychiatry are not his field of expertise so he refers all psychological patients to the appropriate physician for evaluation. Brandy Kadous asked Dr. Krasner what changes, if any, would he make with the new definition that the Board will be using henceforth for applications received after July 1, 2009 where a total and permanent disability is the only definition that will be allowed. Dr. Krasner replied that the only thing he would change is in the two-step process. Step one is to determine the restrictions necessary to keep a person safe and healthy. That will not change. However, in step two he compares the restrictions with the job duties. He would not be able to do step two because the Board would not now be interested in whether a person can do just this job but if the applicant can perform any job. Brandy asked for clarification of the new rules that were effective July 1, 2009, that says that a person is permanently and totally disabled and unable to perform the duties of any job within the City. He asked if the Human Resources Department providing accommodations for anyone who is not able to work in their present position. Cindy replied that the City has a policy of interactive accommodation that must be requested by the applicant per the American Disabilities Act.

Chairman Bjorndahl asked Dr. Krasner if a quadriplegic was presented to him for a disability evaluation, under the new rules, would he then tell the City of Tucson that this person is disabled and unable to work in any job. Dr. Krasner replied that quite the contrary, in fact. He would list the restrictions he felt necessary to keep the employee safe and healthy which would include no use of arms or legs, availability of a portable ventilator, etc. The City of Tucson would then determine if there is a job that is available that met these restrictions. Chairman Bjorndahl asked how the Social Security Administration determines a disability. Dr. Krasner replied that there are several steps involved in the evaluation. Step one asks if the applicant is involved in significant gainful activity. If the answer is affirmative, the application is denied. If the answer is negative, they go to step two which determines if the applicant has a significant medical impairment. If the answer is no, the application will be denied. Step three is to determine if the claimant's impairment meets or equals definitions in the SSA "bible". If the impairment does not meet the definitions, the applicant is sent to Dr. Krasner to determine what kind of restrictions the applicant requires and if there are any positions available that meet those restrictions.

2. Discussion of significant gainful activity concept

Brandy asked the Board if it is in the Board's purview to require a disability applicant to seek accommodation prior to the Board making a decision. Jean Wilkins asked if it is not in the Board's purview, what can be done with the applicant. If there are no positions available at the City, is the person then thrown out on the street? Cindy replied that, according to the Board's newly adopted rules, if the person is able to work, they are not disabled. However, with the declining economy, the number of jobs available is not as plentiful as previously. If a person is not able to perform their currently job but is able to perform some job, that person is not disabled because they are not "permanently and totally disabled." Brandy asked again if it is in

the purview of the Board to ask a disability applicant if they have sought accommodation from Human Resources. He asked if the Board could recommend that the applicant sought accommodation prior to any further deliberation by the Board. Brandy suggested that this question should be included on the application.

3. Discussion of total and permanent disability concept

Dave Deibel advised the Board that there will be new guidelines and standards forthcoming from the City Attorney's office. Gage Andrews asked what kind of compensation comparison is made in regards to "accommodation" for a person who is not capable of performing the duties of their current job. Does "accommodating" a person mean the same level of pay as they were making or just another job within the City? Cindy replied that according to the ADA regulations, a person seeking accommodation is kept at their current pay rate or less 4% but as close to their current rate as possible. Lynne Greenawalt, who is in charge of leaves and long-term disability claimants, responded that they keep the employee as close to their current rate of pay as possible, even if they are in a lower job classification. For long term disability claimants, they are at 80% of their pay. Dave Deibel remarked that his feeling is that there is a range between what the employee is currently making and what they would get on a disability retirement. If the City is able to find employment for the employee within that range, he believed that would be acceptable. Gage and Brandy both suggested that the Long-term disability policies are adopted by the Board as their policies. Cindy asked if a job isn't currently available to accommodate a disability applicant, does the Board want to adopt the policy that the disability retirement be approved conditionally and revisited in a year to see if a job becomes available that the retiree is able to do. Dave Deibel commented that his opinion is that once a person has been granted a disability retirement, the City would not reach out to the retiree to reverse the Board's decision. Jean Wilkins remarked that, on another Board on which she sits, there is a policy regarding disability retirees that the retiree has to be re-evaluated after a period of time. She said that there has not been an occasion where the disability retirement was reversed after succeeding evaluations which are required until the retiree reaches their normal retirement. Gage asked if a disability application was presented to the Board prior to the final version of the disability application and policy being adopted, would there be an issue if there is a change after a decision had been made by the Board. Chairman Bjorndahl answered that he believed that until the final version was presented to the Board, no application could be considered because of possible changes that might be made after a decision is made.

C. Discussion of Death Benefit Provisions with Employees

Linda Hatfield, President of CWA/TACE Local 7000, remarked that she thought the proposed death benefit while eligible was discriminatory because there is a difference in a beneficiary versus a spouse. A beneficiary is afforded one type of benefit while the spouse or domestic partner is afforded a different kind of benefit should their husband/wife die while employed yet eligible to retire. She said she thought it should be a personal preference rather than an employer preference. She understood that for a beneficiary (non-spouse), the benefit would be twice the annual account plus interest but if it was the spouse, the benefit would be a 100% monthly annuity. She stated that she believed that previously the choice was given for either a spouse or a beneficiary. Doris Rentschler commented that in the code that was just retired, an annuity benefit was offered to a spouse or domestic partner only. An annuity was never offered to a non-spouse unless a pre-selection form was completed. The default option has always been for a spouse or domestic partner. The change occurs when we formerly allowed a pre-selection option where an employee who is eligible for retirement continues to work can choose any type of option for their beneficiary(ies). Jean Wilkins commented that she understood that when an employee retires, they can select any benefit option they want for whomever they want. Cindy clarified that Jean's understanding was correct except that a married employee who does not leave the benefit to the spouse would be required to submit a spousal consent form. Jean asked why that policy couldn't be allowed while an employee is still working, giving them the option to select the benefit they

want. Mike commented that the whole issue revolves around whether the pre-selection process will continue which was not the intent of the rewritten code that virtually eliminates the pre-selection process. Doris advised the Board that the pre-selection process was very difficult to administer because the majority of people who are eligible to retire would not return the form that was sent to them. With the exception of the mass mailing done in June, which garnered a good percentage of returned forms, typically only about 3% of the forms would be returned at any given time. Mike remarked that a good response was received from the mass mailing of the pre-selection form and designation of beneficiary form. A total of 273 forms were returned. 196 of the 273 were spousal selections. A total of 77 were non-spousal, of which 20 chose the option to receive a lump sum benefit. 92 forms were not returned or were returned after the deadline. Cindy commented that the IRS is looking for processes and procedures that are easily and equitably administered. By having a default, this answers the need for fairness and equality. Jean questioned whether it is fair and equal when there are two standards, one for spouses/domestic partners and one for non spouses.

John Thomas commented that he has listened to the conversation around the table and it appears that the Board is speaking on behalf of the employees without asking the employees what they want. He said that everyone he spoke with indicated that they would like to see the benefit for unmarried employees the same as for married employees. The pre-selection option previously made this possible. John commented that the announcement regarding the proposed change to the benefit was good except it left out three important things:

- no explanation of the difference between the annuity and the lump sum benefit – how that looks monetarily
- no explanation of what the change was and what it was previously
- no explanation of why the Board was making the change

He said that these three things were necessary for the employees to understand what is going on. He said that one of his colleagues believes that the proposed change is discriminatory against both unmarried and female unmarried employees. While there is a proposed benefit for spouses of a Joint and Survivor 100% benefit, that is not allowed for unmarried employees and is therefore not equitable. John believes the employee should be allowed to select the option they want for their beneficiary(ies).

Janet Nickell had two observations to make. She said that the number of people impacted by whether their beneficiary gets a lump sum or an annuity was very small. However, for those people for whom it matters, it is a huge issue. She spoke specifically of a woman who is responsible for her mentally disabled brother. For her, the issue of whether her beneficiary receives a lump sum or an annuity is a huge affair. He will need a guardian and whether there is long term care (monetarily) is something she is concerned about. Chairman Bjorndahl commented that if the woman about whom Janet was speaking selected an annuity for the disabled child, he would then lose his government benefits. He said that would be the worst case situation for making the annuity solutions. Janet Nickell asked that while the annuity may be the wrong selection, shouldn't the employee be allowed to make the selection regardless? Silvia Amparano commented that what the Board needs to consider is what is best for the Plan and, while it is nice to offer various benefits to various people, it is not required that these benefits are offered. What it comes down to is what is best for the Plan.

After much discussion and much confusion, clarification was made regarding the issue at hand. The issue is that, while spouses/domestic partners were covered under the proposed change with a joint and survivor 100% benefit or 2 x the member's account balance benefit, unmarried employees were offered a like benefit, just the 2 x the member's account balance lump sum benefit. Chairman Bjorndahl asked why the unmarried employees couldn't have the same option. Mike replied that most unmarried employees had more than one primary beneficiary which will not allow for an annuity because an annuity is based on the beneficiary's age. If there is more than

one beneficiary, on which beneficiary's age will the benefit be based? Doris broached a similar subject regarding employees who are vested but are not yet eligible. She reminded the Board that in the previous version of the Code, beneficiaries of these employees were given a choice of a Joint and Survivor Benefit 50% or 2 times the member's account balance as a lump sum payment. The annuity option has been eliminated in the new Code effective July 1, 2009 giving only a lump sum option for beneficiaries of members who die while vested but not eligible to retire. This would cause an undue hardship for many employees' families. Cindy responded that an annuity benefit would not have been available to that employee while alive, therefore it should not be available to them in death (for their beneficiaries). The Board concurred with Cindy. It was not in the System's best interest to provide an annuity benefit to non eligible employees or their beneficiaries. There was much discussion regarding the pros and cons of a term certain benefit for multiple beneficiaries. After careful consideration, the consensus was that a term certain benefit could be afforded to an unmarried employee's primary beneficiary. If there were multiple beneficiaries of an unmarried employee, the beneficiaries would receive 2 x the member's account balance. To make the decision of the Board clearer, Cindy Bezaury presented the following matrix:

<u>Status</u>	<u>Employee w/Spouse or DP</u>	<u>Employee w/no Spouse</u>
Pre-Vesting (< 5 years)	1 x member's balance (lump sum)	1 x member's balance (lump sum)
Vested (not eligible to retire)	2 x member's balance (lump sum)	2 x member's balance (lump sum)
Eligible to Retire	Joint & Survivor 100% <u>or</u> 2 x member's balance (lump sum)	Term Certain 180 months <u>or</u> 2 x member's balance (lump sum) for one beneficiary 2 x member's balance (lump sum) for multiple beneficiaries
Retired	Employee Chooses	Employee Chooses

With this default process, it is assured that the City will maintain its tax-free status with the IRS.

John Thomas asked if it would be possible to provide the term certain 180 to multiple beneficiaries. Cindy answered that there are multiple life spans to track and it would be too difficult. However, it would also required all of the beneficiaries to agree to an annuity. Making the lump sum the default for multiple beneficiaries gives the opportunity to be split equitably. Jean Wilkins asked what the audience thought about the proposed change to the non-spousal benefit options. Janet Nickell commented that the proposal makes sense and that she would make sure that her colleagues would be made aware of this proposal. Linda Hatfield agreed that she is in support of the proposal.

Brandy asked for an example using figures with the various scenarios listed above so that the employees can see in dollars what the differences are. Mike agreed to create a mock estimate for illustration purposes.

This will be put on the August Board Agenda and, after approval by the Board, brought to the Mayor & Council for input.

D. Disability Applications*

1. Helen Gutridge (tabled from June 2009 meeting)
Cindy Bezaury **moved, seconded** by Gage Andrews to move into Executive Session. **Motion passed 6 to 0.** Cindy Bezaury **moved, seconded** by Gage Andrews, to move into Regular Session. **Motion passed 6 to 0.** Brandy Kadous **moved, seconded** by Gage Andrews, to direct Ms. Gutridge to seek accommodation from the Human Resources Department prior to the Board making a decision. Chairman Bjorndahl commented that he would not be supportive of this motion. He would be more supportive of granting the disability retirement. While the Social Security physician and the City physician indicate that they don't support a medical retirement, he looks at the list of medications she is on

and is concerned for the safety of both Ms. Gutridge and anyone she deals with. He thinks that she is over medicated and is on medications that she shouldn't be on. Considering the medications she is on, she wouldn't be able to do much in the way of useful employment. Ms. Gutridge's husband commented that Helen has attempted to discontinue the medications on three separate occasions only to end up in the psychiatric ward for attempted suicide. **Motion failed 1 aye to 5 nos.** Jean Wilkins **moved, seconded** by Silvia Amparano, to approve the disability retirement. Voice vote was not clear – it appeared to be 3 ayes and 3 nos. Dave Deibel advised the vote needed to be taken by roll call. Board Secretary Claire Beaubien called roll with the following results: Cindy Bezaury – No; Brandy Kadous – No; Gage Andrews – No; Jean Wilkins – Yes; Silvia Amparano – Yes; Brian Bjorndahl – Yes. **Motion failed due to tie vote.** Brandy Kadous **moved, seconded** by Gage Andrews, to table the application until the August meeting when a full Board will be present. **Motion passed 5 to 1** (Cindy Bezaury voted no).

2. Matthew Guild

Gage Andrews **moved, seconded** by Cindy Bezaury, to move into Executive Session. **Motion passed 6 to 0.** Cindy Bezaury **moved, seconded** by Gage Andrews, to move into Regular Session. **Motion passed 6 to 0.** Cindy Bezaury **moved, second** by Gage Andrews, to disapprove the disability application. **Motion passed unanimously by roll call vote.**

3. Ferris Riba

Cindy Bezaury **moved, seconded** by Silvia Amparano, to approve the medical retirement for Ferris Riba. **Motion passed unanimously by roll call vote.**

4. Thomas Kirberger

Cindy Bezaury **moved, seconded** by Gage Andrews, to approve the medical retirement for Thomas Kirberger. **Motion passed unanimously by roll call vote.**

E. Consent Agenda

1. Approval of June 25th Board meeting minutes
2. Service & disability retirement ratification – July, 2009

Cindy Bezaury **moved, seconded** by Jean Wilkins, to approve the Consent Agenda. **Motion passed 6 to 0.**

F. Investment Activity / Status Report

1. Portfolio composition, transactions and performance

John Behrens reported that the Fund balance as of 6/30/09 was \$484.2 million compared to \$487.3 million as of 5/31/09. As of 7/22/09, the Fund balance was \$497.6 million, an increase of \$13.4 million from June, 2009.

John recapped the balances for FY09 as follows: the highest balance was \$652.7 million on 7/1/08 and the lowest balance was \$411.0 million on 3/9/09. The all time high balance was at \$714.7 million reached on 10/10/07.

For the month of June, all managers were within their target allocation ranges except for Macquarie who was over its target range by .1% (3.6% versus maximum range of 3.5%). International Equities was slightly under its range by -.1% (12.9% versus minimum range of 13.0%).

As Allen Bentkowski reported in June, \$1.5 million (taken from PIMCO Fixed Income) was transferred out of the BNY Mellon Custodial Account and into the City's Investment Pool Account on 6/26/09. That brings the total transfers for FY09 to \$26,760,000.

Total fund posted a -0.35% return for the month of June versus a -0.41% for the Custom Plan Index. Fixed Income was up .53% for June versus .57% for the Barclays Aggregate Index. Total Equities posted a loss of -0.07% vs. 0.13% for the Equity Composite. Total Real Estate was down -2.70% for June and -7.13% for the quarter which compares with the NCREIF ODCE quarterly return of -9.33%.

Total Infrastructure posted a loss of -4.13% vs. 1.19% for the "CPI + 4%" index. This was mainly due to year-end reconciling adjustments between BNY Mellon and The Steel River account.

On a calendar year-to-date basis absolute returns for Fixed Income and Equities are positive which was offset by negative returns in Real Estate. Overall, the Total Fund posted a 1.75% calendar YTD return vs. 3.68% for the Custom Plan Index. Fixed Income remained strong with both managers outperforming their respective managers. Five out of 9 Equity managers outperformed their benchmarks calendar year-to-date. PIMCO StocksPlus, Pyramis & TCW Value posted very strong returns which were offset by poor returns from Friess Associates and Artio.

Real Estate remains weak calendar year-to-date, but overall managed to outperform its index - 21.67% vs. -27.74% for the NCREIF – ODCE Index.

Finally, John concluded with a summary of the FY09 plan performance. He said that the Plan concluded a very rough fiscal year with Total Fund returns down -21.37% vs. -17.97% for the Custom Plan Index. If it wasn't for the Equity Market coming back in March, April and May, returns would have been much worse. On an absolute basis, Fixed Income posted positive returns for FY09, but overall lagged its benchmark 4.53% vs. 6.07%. John reported that there wasn't any good news from the Equity managers who all posted very poor, negative returns. On a relative basis, 5 of 9 managers outperformed their benchmarks, but overall, Equities posted a -31.46% return vs. -27.10 for the Equity Composite. Real Estate remained weak throughout FY09 posting a -27.43% return vs. -28.35% for the NCREIF – ODCE.

John reminded the Board that Hewitt will be attending the August meeting presenting the 6/30/09 PRIME report and will be going into more detail regarding FY09 results.

G. Policy Discussions and other information

1. Policy on Employee Communications

Jean Wilkins **moved, seconded** by Gage Andrews to approve and adopt the Policy on Employee Communications as presented. **Motion passed 6 to 0.**

2. 90 day Treasury Yield Rates for End of Service Crediting [Sec. 22-38(e)(2)]

As a point of information, Mike informed the Board that the new interest to be posted on End of Service accounts would be 0.17%.

3. Draft of Disability Retirement Process and Application

Mike asked the Board to review the Disability Retirement Application and send any comments regarding any changes they think should be incorporated. Brandy Kadous suggested that there should be consistency in the language use. Mike suggested that this item be brought back to the next Board meeting for adoption, or comments, changes, etc. Doris asked if this application is acceptable to use because she has had a request for an application. The consensus of the Board was that the draft application was acceptable to use at present. Doris advised the Board that when an application is presented to the Board, there will be a distinction in its appearance to differentiate the two separate rules under which the application should be evaluated. Mike said that the Board will also be reminded that the application was pre-July 1 or post-July 1, 2009.

4. Code amendment for Magistrate furloughs, scrivener's corrections scheduled for Aug. 5th
This item is also an informational item for the Board's information. This amendment was effected to address the furlough issue for Magistrates since the Magistrates are taking a reduction instead of a furlough.
5. Board member booklet (index only, booklets to be distributed at meeting)
Mike apologized to the Board that the Board Member Booklet was not yet available due to a staff shortage during the last few weeks.

H. Future Agenda Items

1. Friess Associates – August 27th meeting
2. Macquarie (MEIF3) – August 27th meeting
3. SteelRiver IFNA – August 27th meeting
4. Hewitt & Associates (June 30, 2009 Prime report) – August 27th meeting
5. Final version of death benefit for approval

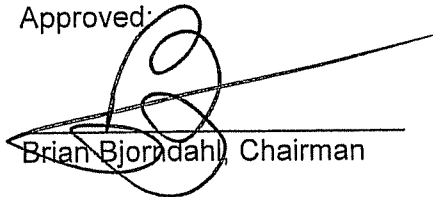
I. Call to audience

None heard.

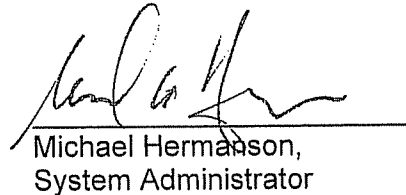
J. Adjournment

Cindy Bezaury **moved, seconded** by Jean Wilkins, to adjourn the meeting at 11:27am. **Motion passed 7 to 0.**

Approved:


Brian Bjornstad, Chairman

8-27-09
Date


Michael Hermanson,
System Administrator

08.27.09
Date